HOW TO RATE A RAILWAY

IN ACCORDANCE WITH

THE DECISIONS

OF

THE COURT OF QUEEN'S BENCH:

Suggestions

FOR PRACTICALLY APPLYING THE LAW OF RATING TO THE CASE OF RAILWAYS.

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PREFACE.

THERE are few subjects the law of which has been so frequently considered of late years as that of the rating of railways—not, however, because the law had been previously uncertain or unsettled, but by reason of the increasing amount of property to which it has had recently to be applied.

Tolls, though not rateable per se, yet, as increasing the value of the land in respect of which they are received, and which is occupied for the purpose of receiving them, become thus indirectly liable, and the liability of land so occupied to be rated at an amount proportionably increased, has been long since satisfactorily established. The controversy between the parochial and the mileage system, if it ever was put forward seriously, has been now settled by authority. The Parochial Assessment Act came in aid of the older decisions, and, by defining the rent as the proper test of rateable value, left little to be done by the tribunal

before whom questions of this kind might come, but to investigate what such rent might be reasonably supposed to be. The Court, placed in the position of a tenant willing to rent the property, has first to ascertain what gross receipts may be anticipated from it—what expenses must be incurred in order to obtain them—what profit on his capital thus employed the tenant will be satisfied with—and, having done this, finds the residue, if any, which will be available for the payment of rent.

Such matters in the following pages are treated as settled and beyond controversy. But the mode in which the law so settled is to be practicably applied, has, even in the case last discussed before the Court, been treated as an open question, and in the judgment as a matter only to be solved by legislative interference.

This dictum of the Court of Queen's Bench as to the necessity for legislative interference, has in its immediate effect been unfortunate. Existing compacts, made between the companies and the parishes, were thereby unsettled, and the difficulty of effecting settlements for the future was much increased. It is impossible for parties to agree who have no common basis for their calculations; and the party to whom a calculation based on the

existing law would be unfavourable, is fortified in his unwillingness to acquiesce in it by the opinion of such high authority that the law is unsatisfactory and inapplicable.

In the following pages it is endeavoured to be shown that these difficulties are neither new in kind, nor peculiar to this particular description of property; that they are merely an exaggerated form of difficulties inseparable from the rating of all property, and consequently not to be remedied by any partial measure, which, by establishing in particular cases some arbitrary rule, would of necessity disturb and confuse the general law; that the difficulty in all ordinary cases has been generally solved without litigation, and that in this case it has been for interested purposes unduly exaggerated; that mathematical accuracy, the impossibility of attaining which has been so strongly urged, is in other cases equally unattainable, and lastly, it has been endeavoured to suggest the mode which is in principle correct, and by which sufficient accuracy may be obtained.

For although the mode suggested in which the existing law may be applied should be found to present greater practical difficulties than are anticipated; yet, if its correctness in principle should be admitted, it would at least serve as a basis upon

the subject of the mode of obtaining this information we shall presently recur. In the meantime it is to be observed, that, notwithstanding these apparent difficulties, the Court of Queen's Bench, repeatedly appealed to, has been generally consistent in its series of decisions on the subject. And if the most recent of these appears to be the least satisfactory, it is because the principle of the earlier cases was abundantly clear and intelligible, while more recently there appears to have existed an over anxious desire to apply that principle to details, upon the practical working of which the court was not sufficiently informed. An attempt by which considerable difficulty might have been introduced, had not the court expressly repudiated the intention of laying down any new principle or departing from that of the earlier cases.

To the earlier cases, therefore, we now refer, as laying down, in conjunction with the Parochial Assessment Act, clear and intelligible principles, sufficient for the present purpose, and to which nothing could probably be added as a proposition of law, which would not entail more difficulty than it could obviate.

The following are some of the principal rules which may apparently be thus deduced:—

1. A rate is a parochial matter, and its application being limited by law to the purposes of a particular parish, it can legally be imposed only upon property situate within the parish.

2. All property within the parish is to be assessed

upon an estimate of its clear annual value to a landlord, or upon the net rent at which it might be reasonably supposed to let to a tenant.

3. In estimating such probable rent or value, every circumstance is to be considered by which such rent or value may be affected; and this equally whether such circumstances arise in the same or in any other parish. In other words, the rateable value within the parish may depend upon matters without the parish.

4. Where property in the hands of a single occupier extends into two or more contiguous parishes, the assessors have only to deal with that portion of it which lies within their parish, although essentially connected with other portions, and occupied with them at an entire rent. But the circumstances of those other portions may affect the rateable value of that portion within their own parish.

5. Stock in trade is exempted from rateability.

These rules contain all the main principles of law to which we shall hereafter refer. And it may be well to remark, that, in their primary application, there is nothing in the case of a railway, or even in that of a canal, which necessarily differs from other property of a more ordinary kind, or which compels these main rules to be applied in a different manner. An isolated mile of railway in a particular parish can never, it is said, be supposed to have a net annual value, or to produce any rent, unless in connection with some further portion of it.

The same may be the case, however, in any other kind of property. An owner of an estate situate in two or more parishes may occupy and farm the whole of it. It may be so circumstanced as to arable and pasture land, farm buildings, water, machinery, or a variety of other matters, that the portions in the respective parishes never have been nor could be separately occupied, so as to produce any rent or net annual value. But the rule is not therefore the less applicable. In either case we discard the hypothetical, and import no imaginary difficulties. Whether the portion of railway, or of the farm, could or could not be occupied separately, we care not. We find that it is actually occupied; and the third and fourth rules enable us to consider everything essential for determining the actual value of such occupation. Some matters beyond the limits of the parish must be considered, but those only beyond the parish which directly affect the net annual value of the land within it.

For example (and the illustration is one to which it may be necessary to refer again hereafter), the portion of an estate in parish Stoke is a sterile and unprofitable waste, which, by the erection of machinery and works upon a stream in the contiguous parish, Thorpe, is converted into profitable water-meadow. The works in Thorpe are maintained at a certain annual expenditure, by means of which certain annual receipts continue to be derived from the water-meadow. Now, in estimating the net annual value of the meadow for the purposes of

rating in Stoke, it is clear that, by the third rule, so much must be deducted from the gross receipts derived from it as is necessary for keeping up the works in parish Thorpe. Without these works the receipts would be small or *nil.* Again, the rateable value of the works in Thorpe must be estimated with reference to their value as connected with the meadow in Stoke. The separate value of the works, like that of the meadow, would be *nil.* No one could be supposed to rent either the one or the other by itself. But it is idle to create any imaginary difficulty about an improbable and non-existing state of circumstances: we find them actually occupied—a rent, perhaps, actually paid; or, if occupied by the owner, we estimate the amount of rent which a tenant would give for the occupation. We can estimate this correctly only by referring in each case to circumstances without the parish—circumstances, however, directly affecting the value of the property within it.

The above illustration supposes a very simple case, but one which may at any time become more complicated. The works erected in Thorpe may be made to produce in twenty different parishes the same effect as in Stoke; and then, as we shall presently show, they would become the counterpart of a station, or of a steep incline, or stationary engine, or indeed of any other apparently local expense on a line of railway. Such cases are, indeed, infinite in number, and varying in every degree of complexity, from that which has just been men-

tioned, to the case of a long railway composed of trunk and branches. A hundred similar instances occur in the case of mines. Many mills and manufactories are placed on the confines of two parishes, the more frequently as, for the purposes of their machinery, they are constantly attracted by the streams which so often form the parish boundaries. Many a private dwelling-house has been invaded by the parish children who periodically beat the boundaries; and it were endless to multiply examples of that which is so common an occurrence, that probably a majority of parishes could furnish a specimen of it in some form. Yet these varieties of the same difficulty have scarcely furnished a contest requiring the intervention of the courts; and this, surely, because the difficulty of making an estimate sufficiently correct for all practical purposes is trifling, capable of easy solution by those who really wish to solve it, and because individuals are less profitable victims of litigation than railway companies.

If the above rules be correct, they contain in themselves the answer to the main question asked in railway rating:—What portion of the estimated net value of an entire property, occupied in several parishes, is the proper subject of assessment in each? for they declare it to be that portion of the net annual value which arises or is derived from the portion of property in this particular parish. The net annual value of that portion which is without the parish is rateable elsewhere. To ap-

propriate it is, as it were, to rob the parish where it arises, and to call upon that parish to ease the parochial burdens of its neighbour.

The question was directly proposed to the Court of Queen's Bench, in one of those earlier cases from which our rules have been deduced, and it was most clearly and satisfactorily answered. In the case of *Rex* v. *Lower Mitton* (9 Barn. & Cress. 810), Bayley, J. says, "the question in this case is whether the profits of the locks situate in Lower Mitton are rateable in all the parishes through which the canal runs in proportion to the length in each parish or not? The sessions were of opinion that they were, and we think that their decision was wrong. It is now fully established that the proprietors of a canal or navigation are rateable as occupiers of the land covered with water in the particular parish in which the land lies; and it follows from thence, that they are rateable in each parish in proportion to the profit which that part of the land covered with water which lies in the parish produces." And he then proceeds to explain the rule in terms so clear and decisive as would seem to leave nothing open to future litigants. "If that part of the land covered with water which lies in the parish is more productive than other parts of the canal, either because there is more traffic or because larger tolls are due upon it, or because the out-goings and expenses there are less, it must be assessed at a higher proportionate value." And it follows, that if it be less productive than other parts of the canal,

either because there is less traffic or smaller tolls are due upon it, or because the outgoings and expenses there are greater, it must be assessed at a lower proportionate value. Surely, after so lucid a decision, the Court of Queen's Bench cannot be blamed, if the muddy understandings of parish officers, or the over-acuteness of their legal advisers, again made this very point the subject of controversy and litigation.

The companies, however, it must be admitted, had a considerable share in contributing to the re-opening of the contest. In the earlier stage of railway enterprize, it was not unfrequently the policy of these companies to shroud in impenetrable mystery everything relating to their accounts. And without further characterizing this system, suffice it, for our present purpose, that it rendered it impossible for the companies to disclose those facts and figures, by which the proper amount of rateable value in each parish might be ascertained according to the rule given so lucidly by the Queen's Bench.

From this followed one of two results—either the company submitted to an assessment, however extravagant, rather than disclose the state of its finances, in order to give proof of the inaccuracy, or the whole question was avoided by suggesting that a mileage proportion of some entire sum should be taken—a compromise which might by consent be taken as a *substitute* for the proper subject of the rate, but a clear violation of all the rules which

principle or authority had sanctioned, and directly opposed, as it will be seen, to the first of the rules mentioned above—a compromise, however, to which it was essential that every parish on the line should be a consenting party. This latter condition it was impossible permanently to obtain. Even in the case of trunk lines, and before any branches had been added, the profits of the parts nearest to the Metropolis were found greatly to exceed those of other parts, and a mileage division was assented to by those parishes only to which it gave a larger portion than their due. The system of financial mystery was at length given up, and while a principal motive for a mileage division thus ceased, the disparity between the net annual profits of different portions of the line was much increased by the addition of branches to the main trunk, some of which were of trifling value, or occasionally even worked at a loss. The mileage division, always baseless in law or principle, always fraught with some injustice, became daily more practically inapplicable, and it became essential to return to the mode prescribed by principle and authority, from which it would perhaps have been more wise never to have allowed a departure.

The parishes, however, which heretofore had found the companies submitting to extortion, or which had been benefited by the mileage division, were not disposed to surrender their advantages without a struggle. Their advocates, unable to support the propriety of the mileage division, were

compelled to direct all their arguments to demonstrating the defects and difficulties of the existing law, and the superior advantage and simplicity which attached to other suggested systems. It is no disrespect to those advocates to say that they had an easy task, to point out in the existing law difficulties which had been discovered by years of actual experience, and to extol the merits and advantages of untried and imaginary systems. It was clear that, under the existing law, mathematical accuracy in rating railways could not always be obtained, and the Court was pressed with instances which demonstrated it; but it was apparently forgotten that such accuracy is, from the nature of the case, equally unattainable in respect of any other kind of property; that for such purposes an estimate is all that the law proposes, or that justice practically requires, and that mathematical accuracy would continue to be just as unattainable under any possible suggested system.

Had mathematical accuracy been deemed essential for the purpose of rating, it would have been impossible that the Act of Elizabeth could ever have been put in operation. Whatever difficulties now suggest themselves in making assessments upon the more complicated kinds of property, which are of modern creation, must have been more than equalled formerly by the want of experience and information, by a lower state of general intelligence, and by the absence of many means which now exist for estimating the value of property.

Tithes, woods, mines, the comparative outgoings and consequent allowance to lands and houses, property held by different tenures—all these must have suggested difficulties, if mathematical accuracy were required, insuperable, and have suggested questions which the courts have from time to time been called upon to solve.

Yet the argument from exaggerated difficulties, at length, after repeated pressure, succeeded in alarming the Court of Queen's Bench. Forgetful of the concise principle which had been laid down by their predecessors, in former cases, where the arguments upon suggested difficulties might have been, and probably had been, as strongly pressed, the Judges began to invoke the aid of the political Hercules. "The Court," they said, "felt a great difficulty in determining how a Railway Company should be assessed in a parish through which a branch passes, without any station being in the parish, and where the traffic is small, and the outgoings comparatively large, the only guide as to such deductions being, that the probable annual cost of repairs, insurance, and such other expenses, should be deducted, without any intimation as to what is to be done with respect to tunnels, embankments, or standing engines employed exclusively within the parish, or locomotive engines employed on the whole line, or the general expenses of the directors who manage the entire concern, or the charges arising from the maintenance of stations, or the employment of police.

Without some alteration in the law, the Court would, in settling such questions, be acting as legislators, rather than expounding the law; and they therefore deferred giving judgment, *in the hope that before the next term Parliament would interfere,* and relieve them from the difficult position in which they were now placed, when called upon to administer the existing law with respect to the rating of railways."

It must be admitted that, if the former part of this dictum, or even the purport of it, is correctly reported, the arguments had been completely successful in mystifying the whole subject of dispute; for the difficulties so confusedly enumerated are all difficulties of fact, to be dealt with, as will presently be shown, according to evidence in the particular case; they are matters differing so entirely in the case of different railways, that no skill could frame an act of parliament generally applicable to each case. The attempt to legislate for details has rarely been successful. Nor are these difficulties, as matters of principle, exclusively peculiar to railway rating. And the interference of Parliament would be most mischievous, introducing more injustice and inconsistency than it could hope to mend, unless it were to effect an entire change in the mode of rating property of all descriptions. So soon as this dictum was made known, and the interference of Parliament had been invoked, several specifics were suggested, by which this supposed evil might be remedied;

indeed, the "stare decisis," the continuing to rate as heretofore, was the only mode which seemed entirely to be given up. These it would be beyond our task to notice. One principle pervades them all, viz., the sacrifice of a just to an easy mode of rating. They all violate the first rule of rating, for they all propose to impose a parochial assessment upon net annual value arising without the parish—they all propose to withdraw from the subject of assessment within a parish some of the net annual value there arising. To the merit of superior simplicity we may probably apply the terse remark of the historian upon the unfortunate Galba, that he would have been "Consensu omnium capax imperii nisi imperasset." Simple enough they may appear to be, and capable of putting an end to litigation, until they have been tested by a year of actual operation; but where the motives to litigation are so strong, no new arbitrary system will put an end to it. The great topic of the appeals to the Court of Queen's Bench, might perhaps be changed. Injustice, rather than difficulty, might be insisted on, though it may well be doubted whether the difficulties would be removed, and whether injustice would not be an additional topic, rather than a substitution.

We have now considered the settled and existing principles of rating, and in some measure explained the origin and history of the difficulties that have heretofore arisen in the application of

these principles to rating railways; we have shown that whatever be those difficulties, they are more or less common to the rating of all kinds of property, that they have been from interested motives needlessly exaggerated, and that a change in the law itself is not to be looked to as the remedy. It remains to be shown in what manner those general principles of rating, as at present sanctioned by law, may, as it appears to us, be applied to the particular case in question.

And here the first observation which arises, is that, taking as our guide the Parochial Assessment Act, we must be careful to make no confusion between our estimate of the net annual value arrived at by one distinct set of proofs, and an estimate of the supposed rent derived from proofs of an entirely different nature. In the case of a railway, the assessors may make an estimate of net annual value, *or* of the rent, but the two must not, as will presently appear, be confused. The overlooking of this circumstance has led in the following manner to much unnecessary discussion and valueless evidence. In commencing to find the net annual value, the gross receipts of the company from a given mile of railway have been ascertained, and then this question is put to witnesses of supposed competent skill: "What would you give as rent for a railway of which the gross receipts amount to so much per mile, for example, 1,000*l.*?" The zeal of a witness will probably suggest some ready answer, and the amount named

is accordingly set down as the proper rateable value. But no truthful answer can be given to a question which is involved in fallacy and confusion. A railway is unproductive, and no receipts are derived from it until a certain stock has been placed upon it, certain officers and servants appointed to it, and a certain mode of working it is in operation; and when by these means it is made productive, the gross receipts will vary in proportion to the amount expended on the means by which the receipts are to be produced. As for example, the gross receipts per annum of a mile of railway have as below been ascertained to be 1,000*l.*, and they are kept at that amount by the running of ten trains daily each way, which the company, by experience, have found necessary in order to attract the 1,000*l.* of traffic. If five trains per diem only were to run over it, their receipts would possibly fall to 500*l.*, or even less. Long experience of the locality can alone determine in each case the point up to which expenditure would be profitable, and it may be assumed that this has been ascertained by those who have had experience of the traffic, and that the line is worked accordingly. What value then can attach to the question which contains but half the necessary proposition? The witness may give an answer to the question with reference to five trains which is really asked with reference to ten; he may undervalue the annual expense and the amount of the stock required. The process by which he arrives at an answer de-

stroys the basis of the question, which, in order not to be illusory, must contain the whole proposition. What would you give as rent for a railway of which the gross receipts amount to so much per mile, and the expenditure to so much? But then the answer to this question is no longer matter of speculation, and does not need the assistance of such a witness, for it is given by the books and proofs of the company, and can be given in no other way so well, unless it could possibly be shown that the company, for some unfathomable purpose, were indulging in some idle extravagance. It would be fair enough, indeed, disregarding every fact which might be furnished by the experience of actual working, to ask the simple question: What would you give to rent this railway or this portion of the railway? but since you can add to this question no fact derived from experience of the actual working, unless you add every fact, and as the addition of those facts will give the answer without referring to any witnesses, there can obviously be no choice between the two modes suggested, and we must discard the proof from the examination of supposed lessees altogether. We must estimate the net annual value from the evidence of the books and servants of the company. And we must give them credit for ordinary prudence in their trade, for having found the proper limit of profitable outlay, and must act upon the gross receipts as obtained by that outlay.

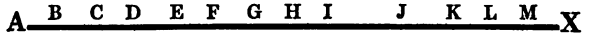
It has been urged, indeed, on the part of the

parishes, that to say that the information required as the proper basis of calculation must be derived from the accounts and officers of their opponents, is to place them in too unfavourable a position. But practically there is nothing in such an objection. It is essential for the management and the requirements of a railway, that those accounts should be kept with reference to other purposes; and the course of proceeding in every case of disputed rateable value, is such as necessarily to cast the whole onus of proof, not upon the parishes, but upon the company. There is nothing to prevent a parish from fixing any arbitrary amount as the rateable value of the portion of railway passing through it; nor is there any mode by which the company can reduce that amount, but by proving upon appeal the real amount at which they should properly have been assessed. If the appellants, who have to establish their case, were compelled to rely on proofs in the hands of their opponents, the objection would no doubt be forcible; but, as it is, the proofs are fortunately in the power of those who have to use them. And if a railway company should keep no accounts, or if those accounts should be inaccurate, they would be actually defenceless against any amount of extortion, which a parish might choose to practise on them; of which the strongest practical proof is in the circumstance that they were defenceless, and were compelled to submit to demands the most extortionate, until the system of financial mystery was

given up. Neither is it necessary to suppose the case to be one of actual litigation. In all ordinary cases the strongest of all possible motives—the sense of mutual interest and advantage—would lead and has led the companies readily to impart, and the parishes to accept, such proofs and information as would enable them to make a fair assessment without the necessity of resorting to an appeal.

Assuming, therefore, that the information is in existence, and that if not furnished readily and amicably, its production may be compelled upon appeal, we proceed to see in what manner it is to be used and applied.

In order to estimate the net annual value of any portion of a railway, for the purpose of rating, the first inquiry will be as to its gross receipts; and the books of the company will, in all cases, supply the requisite information. The charges made by railway companies are, by act of parliament, at so much per mile, according to the nature of the traffic; but although this may render the calculation somewhat easier, it is by no means essential for the purpose; for the books of the company, without it, are a sufficient guide, and the correct mode of inquiry will be best explained by illustration.



It is required to find the gross receipts upon a mile of railway in parish E, which is situate on a

line of railway, the whole of which extends from A to X. We take a mile for the purpose of illustration, but any part of a mile will be found in the same manner. The books of the company inform us, that, within the year in question, a thousand passengers have been conveyed throughout, from A to X, or from X to A, a distance of one hundred miles. It follows, that one-hundredth part of the gross receipts derived from these, has, subject to the deductions after mentioned, been received in respect of the mile in E. Five hundred passengers, during the same period, have been conveyed from A to the station H, or from the station H to A, a distance of fifty miles. Of the receipts derived from these, one-fiftieth will have been received in respect of the same mile in E. The calculation will thus always have to be extended or limited, according to the termini between which any traffic passing over the mile in E has been conveyed; while the receipts from passengers conveyed between A and D, or between F and X, are not to be considered in the calculation, it being obvious that no portion of such receipts are earned in E. The fact that different classes of passengers are charged at different rates, that there are receipts from parcels and for merchandise of different classes, that the particular parish contains so much more or less than a mile, render the calculation more troublesome, but do not in reality increase the difficulty, since it is in each case nothing more than a repetition of the same process.

Such being the correct mode of ascertaining the gross receipts of any given portion of a railway, it is difficult to see why the judges of the Queen's Bench should have felt perplexed at the case of a parish in which there was no station; for the existence of a station within the parish, while it in no degree affects the principle of the calculation, yet renders it practically more troublesome, since it leaves it possible that the receipts in respect of two portions of a line within the same parish may vary, and certainly there is no way in which it can be made to facilitate the calculation.

Possibly in this first step mathematical accuracy may be as unattainable as it would be unnecessary. But it is important to know that information, upon which, as will presently appear, so much depends, can be furnished accurately and speedily; upon this, Mr. Penfold, who was engaged professionally for a parish in a rating dispute with the Great Western Railway, says, "There does not appear to be any difficulty, in so keeping the accounts as to tell at a glance what has been taken every half year between station and station; for upon my applying for this information to the Great Western Railway Company, they allowed their clerk to turn to the books, which were so distinct and well kept that I was answered in a moment, when I asked for the earnings between station and station all along the line between Paddington and Cheltenham—*The whole time occupied being about half an hour.*" This is the testimony of a witness pro-

fessionally engaged against the company, and it is conclusive, as showing that in these disputes the parishes are under no real disadvantages. To obtain all the requisite information on this essential point actually occupied only half an hour. Neither could there be any motive in the company for withholding it. They would have been compelled to furnish it on an appeal, and it was their interest to furnish it amicably, to prevent the necessity of an appeal and its expense.

As the mode of estimating every deduction from the gross receipts will have reference to the mode by which the amount of these receipts has been arrived at, it will be well once more to repeat, that the amount of gross annual receipts in parish E, together with the stations from which and to which the traffic producing such receipts has been sent, and consequently the parts of the railway which it has passed over, are to be found by half an hour's labour.

The amount of the gross receipts on a given portion of railway being ascertained as above, we are now to deal with the outgoings, in order to arrive at the net earnings. These are to be arranged under different heads, not only because they depend on different proofs, but because, although the principle by which they are to be estimated is the same, yet the application of it will vary according to the different nature of the outgoings. In the published half-yearly reports of the com-

panies, and in the several cases brought before the Courts, these outgoings have commonly been arranged as follows:—

1. Maintenance of way.
2. Locomotive account.
3. Carrying account and general charges.
4. Compensation returns and allowances.
5. Government duty.
6. Rates and taxes.
7. Direction and office expenses.
8. Rent of stations.

To which we shall now have to add—

9. Allowance for gradual depreciation of way.

The attempt to apply the principle in precisely the same manner to each of these different outgoings, has been the source of much confusion. The one principle to be borne in mind as applicable to all, is to find what particular portion of the general outgoing under each of these heads is to be charged against the particular portion of railway, or rather against the receipts derived from that particular portion; but this cannot be found in each case by the same method. The last head is now established by the later decisions of the Queen's Bench to be a proper subject of deduction, but in the earlier cases was considered otherwise.

1. Maintenance of way would seem at first sight to be a purely local charge,—that is to say, the amount actually expended upon the maintenance of a given portion of the line would seem fairly to

be set against the receipts from the same portion, estimated as above, and to this first opinion we shall return, after examining the objection which has been raised to it, premising, however, that in so doing we are not considering exceptional cases, the mode of dealing with which under this head will be explained hereafter. The proposed mode, as already intimated, is primâ facie correct, the outgoing being entirely within the parish, and in respect of that portion of property which is the subject of the parochial assessment, and the receipts from which are taken as the basis of the calculation. The objector, therefore, must make out his case, and it shall be stated in the strongest manner possible.

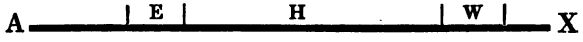
"The maintenance of the particular mile of railway within the parish is not more necessary, it is said, to the receipts derived within that parish than it is to those of any other portion of the line. The railway is one entire concern, the business of which could not be carried on if this portion of the line were not maintained, and consequently there is no sound principle upon which that particular expense can be set against any particular portion of the receipts."

Such is the objection, which, however, needs one important qualification at the outset. The railway is truly one entire concern; but it is *so much of its traffic only as passes over the particular portion* which could not be carried on if that portion of the line were not maintained, for all the

other business of the undertaking may well be carried on without reference to it.

Here, too, as in all other outgoings, it is necessary to bear carefully in mind the mode in which the gross receipts have been estimated; and the objection becomes further narrowed. It should be: that larger portion of the gross receipts of the whole railway, which has been taken as the basis for estimating the gross receipts of the lesser or particular portion, could not have been received, unless the particular portion in question had been maintained. This, no doubt, is true; but, as now correctly stated, it ceases to be any real objection, if it do not rather aid in demonstrating the propriety of the proposed mode of estimating the deduction.

The maintenance of the particular portion has been essential to earning that larger portion of the total gross receipts derived from traffic which has passed over it; but so also has been the maintenance of every other portion of the line which the traffic producing such receipts has passed over. In this respect, all the parts which have been contributing to earn that larger portion have been mutually aiding each other, and are mutually indebted in the same proportion as the particular receipts derived from each. This will appear more clear from an illustration.



That portion, it is said, of the traffic which passed throughout from A to X, and of which E had a

hundredth part, could never have so passed unless the portion W had also been maintained. True; but W also had its hundredth share of this same traffic, which it could not have had unless the portion E had been maintained. And whatever proportion in distance W may bear to E, in that proportion will be the receipts in W derived from traffic which has passed through both parishes as compared with the receipts in E.

We may suppose the portion in W to be two miles while that in E is one mile only, but it will in no way affect the principle; for the receipts in W from the same traffic having been twice as much as they were in E, E will properly claim from W the maintenance of twice as much line in respect of them. The maintenance of way in W has therefore aided the receipts found in E in exactly the same proportion to those receipts as the maintenance of way in E has aided the receipts found in W, and it is to that traffic only which has in this manner passed over two or more parishes to which the objection raised can possibly apply.

It will be said that this answer supposes that the expense of maintenance of way will be found to be equal over each mile of the line. But this is not quite so, for if an increased traffic over any part of the line is found in any district practically to increase the expense of maintenance, that increased expense will actually fall just where, according to the above illustration, it ought to fall. If on the other hand, increased traffic in the par-

ticular district is not found practically to increase the expense, there neither actually will be, nor in principle ought there to be, any increased charge for maintenance in that respect. But, undoubtedly, the answer does suppose that apart from any increase of expense of maintenance which increased traffic may possibly render necessary, the cost of maintenance will primâ facie be equal mile for mile over the line, and in the absence of any evidence to the contrary, this will be the proper primâ facie presumption; not that it will necessarily be correct within mathematical accuracy, but sufficiently correct for all practical purposes until some evidence be adduced to the contrary; for the cost of maintenance of way is for the most part irrespective of the amount of traffic. It might be increased to a trifling extent by a very much larger amount of traffic passing over it. But the nature of the road itself, the soil on which it is constructed —whether upon the level, or in cutting, or on embankment—the nature of the fences required to be maintained on either side—the expenses of culverts, bridges, and drainage—the cost of general superintendence, these are all material items of the cost of maintenance, which can never be affected by the amount of traffic, while upon timbers, rails and ballast, the weather would probably have an influence greater than the amount of traffic.

On some railways, however, it may happen that the cost of maintaining some particular portion of

the line may, from some peculiar local circumstance, be very much greater than that of other portions, though it is worthy of remark that in the case of one of our principal lines, no case of such a nature worth being taken into account as a deduction was suggested by the officers of the company. But the principle upon which such a case, whenever it occurs, is to be dealt with, is not limited in its application to questions under the first head of maintenance of way. It may require to be applied also to cases under the second, third or eighth head, and applies particularly to those difficulties which were so much pressed upon the Court of Queen's Bench, and which were mentioned by the judges in their appeal to Parliament for aid. We will first, therefore, conclude the head of maintenance of way, and then consider all those cases which are to be determined in the same mode together.

It must be remembered that what is said above of the mutual relation of parishes over which the same traffic passes is only in answer to an objection made to the simple and primâ facie mode of estimating an outgoing, it is not to be supposed that parishes have anything to do with following out such a calculation. It is enough for them to know that there is no real objection to the obvious mode of estimating the outgoing, and practically they have only to apply a simple rule.

It may further be observed, however, that in most cases the estimate might be made with quite

sufficient accuracy, if a simple mileage division of the total cost of maintenance of way were taken. In cases where the estimate has been made in both ways, the difference in the result is very small; and this, indeed, might be expected from what has been already said of the items which make up the cost of maintenance of way, and of the matters by which they are influenced. It would be difficult, in fact, to be far wrong in principle, unless the estimate were to be made with reference to the amount of traffic—a course which experience proves to be entirely erroneous.

But how is the actual amount of the expense of maintenance of way over a particular portion to be ascertained? To this the same answer must be given as to the like question in respect of the gross receipts, or in respect of any other fact in the inquiry. It must be ascertained in the ordinary way by proof; such proof to be obtained from the books and officers and servants of the company. These proofs, it must be remembered, will in all cases have to be given by the company, as an essential part of their case. The consequences to the company of attempting to withhold such information, as has been already shown, would be fatal to them upon an appeal. And the dictum of the Queen's Bench in the last decision pronounced, cannot be too much impressed on both parties. "It is our business," says the Court, "only to lay down the general rule, and in applying it much must be left not only to the experience and acute-

ness, but also to the good sense and good faith and candour of the parties concerned, whose interests will be found in the end to be best consulted by this mode of dealing."

It happens, frequently, moreover, that the maintenance of way, or more often the maintenance of way as to some particular matters is let to a contractor at so much per mile. This, where parties are not litigious, will render the calculation easier, as the parties will find the estimate already made for them by those who are practically conversant with the subject, and who are most interested in calculating it correctly. Such a fact, where it exists, would be strong primâ facie evidence, and if either party should assert that from some circumstances, such a contract would not give a sufficiently fair estimate of the cost of any particular portion, the onus probandi would be on such party, and it would be a matter of evidence, as to which the contractor himself would probably be the best witness.

2. The expenses of the LOCOMOTIVE ACCOUNT are those of which it might at first sight appear impossible to assign a particular amount to any particular portion of a railway. But the result of several experiments, and the accurate observation of the actual working of different railways, have now demonstrated that it is ascertainable in a simple and satisfactory manner. For it is found that this cost, though varying on different railways, and on the trunk and branches of the same railway to

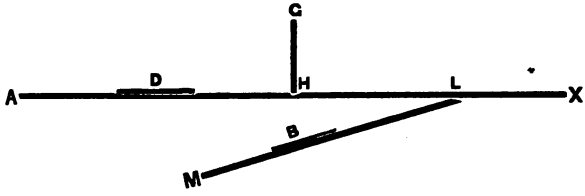
the extent and in the manner hereafter mentioned, may, when found between any given points, be fairly distributed at one uniform rate among the several train miles run. In other words, it is found that, if upon a particular railway the expense of running an engine from A to X, a distance of one hundred miles, is five pounds, it will be fair calculation to say that the cost has been one shilling on each mile which has been traversed. Here then we first ascertain the cost per train mile on the particular railway, or it may be, as will presently appear, on that district of the railway on which the particular portion in question is situated—then the number of train miles, or parts of miles, run on this particular portion in order to earn the gross receipts on it, which were taken as the basis of the calculation, and the cost per train mile multiplied by the number of train miles run in the parish will correctly give the charge for locomotive account in the parish, which must be deducted from the gross receipts earned there.

Reference being had to the mode adopted for estimating the gross receipts, it would seem impossible to suggest any sound objection to this mode of estimating this charge—for in both cases it is made in precisely the same manner, and the expense is thereby made to have a most satisfactory relation to the receipts. The total receipts derived from the load which is propelled by the engine in parish A, whatever may have been its further destination, have been taken as receipts

earned within the parish; so the total cost of the engine at the same moment, that is, while it is engaged in propelling the load through the parish, whatever may be its further destination, is taken as the charge on those receipts. It may be true, that neither the receipts would be earned nor the expense incurred within the parish, but for the connection with the continuing railway out of it. But this is no more than saying that a particular piece of land in a parish would have no value, or not the value which is made the measure of the assessment, but for its connection with a farm beyond it, an objection which has been already dealt with. In neither case is such a suggestion of any worth. We are to assess the actual value of the property, not with reference to possible hypothetical cases which have not occurred, but with reference to the actual existing circumstances of the case.

It has been already said, that the charge for the locomotive account may vary on different railways, or in different parts of the same railway. It will be much influenced by the price of fuel, which varies greatly in different localities; perhaps, also, by the gauge of the railway; but probably, above all, by a circumstance which affects different parts of the same railway, consisting of main line and branches, even more than it affects different railways, viz., the amount of work which each engine can be made to do in the day, or the number of train miles it can be made to run; for the daily

locomotive cost of an engine which is in work upon a railway would not very greatly vary, whether it were running fifty or a hundred miles per diem, if those miles were traversed, as they would be, at different intervals during the day. In either case, the engine must be maintained in full and complete repair and working order; in either case fuel must be used and the steam kept up during the whole working day, the intervals of rest not being sufficient to allow the fires to be extinguished and rekindled with economy; in either case, the wages of the engineer and of the stokers would be the same. Let us, then, suppose the ordinary case of a main line with branches.



Suppose the distance from A to X, as before, to be one hundred miles; and, in the ordinary working of the traffic, it is found that an engine can perform, and does perform, the double journey twice during the day, or that it traverses four hundred miles in its working day;* that the whole daily cost is twenty pounds. This will be a cost of one shilling for each train mile run; and if the parish D

* The amounts and distances are taken only for the purpose of illustration, and are not assumed as the actual work of an engine.

be on the main line, it must be taken as the cost over the mile in D. The branch from M to L is forty miles; and in order to keep up the gross receipts in the parish B at the amount which has been taken as the basis of the calculation, it is necessary to adapt the working on the branch to the traffic on the main line. A train must leave the point L for M on the arrival of the main train from X, and again a train must leave M so as to arrive at the point L when the main train arrives there from A; and this is the mode of actual working, and which keeps up the given gross receipts in B. Now, it is obvious at a glance that you cannot have engines on the branch working with reference to this essential circumstance, and at the same time with reference to the greatest economy, or to the greatest possible amount of work per diem. If the latter fact only were regarded, the engine might run to and fro between M and L, traversing as many miles per diem as the engine between A and X; but it would do so without any object, for it would as frequently have to arrive at L when the passengers had no means of getting on, as it would have to leave L before any train had arrived there. Not being able to leave L before the arrival of the main train, it possibly can only arrive at M half an hour after the time at which it is necessary to dispatch a train from M to meet the main train at L. Thus two engines become necessary on a branch to do the work which, but for this circumstance, might have been well done by one; and conse-

quently the locomotive cost per train mile from M to L may be double what it is from A to X, and this although the engine from A to X is propelling three times the load and earning three times the receipts as compared with what is done between M and L. Yet this difference, it must be remembered, is essential for the earning the given amount of gross receipts within B; and if the expense were not incurred, there might be no value whatever to the line within B. The receipts in B have, in fact, been earned at a greater cost than those in D. This arises from their relative position; the line in D is of much more net annual value on this account than the line in B. But it would be just as monstrous on that account to take the valuable part of the line in D, and assess it in B on what is called a mileage system, as it would be to take any other kind of property in D which might be more valuable than property of the same kind in B, and assess the one parish for the benefit of the other.

The essential circumstance thus alluded to is one about the proof, of which there could barely be supposed to be any difficulty. The actual cost of locomotive power in any particular district of their railway would always be well known to the company, and there exist ample means of testing its accuracy by inquiring into the price of fuel, the number of engines, the number of trains, miles run by each engine, the wages to the engine-men, &c.

To this head of locomotive account, or rather to

the mode in which the outgoing in respect of it is to be calculated, we have now to refer two other outgoings, which have usually been classed with others under the third head above mentioned, but which must be separated from it for the purpose of making the proper deduction in respect of them, these are carriage and waggon repairs and guards.

The cost of repairs of carriages and waggons is found, like that of the engine itself, which propels them, to be fairly capable of estimation at so much per train mile, which they are made to run; and a very brief consideration will serve to show that everything which has been adduced to prove the propriety of the mode of deduction for locomotive cost, is applicable to this cost also, which may indeed properly be termed a part of it. As in the case of the engine, so here the cost can be in no given proportion to the amount of gross receipts, for the carriage, which on a branch of little traffic carries but a single passenger, is yet undergoing the same amount of wear and tear as the carriage which has its full complement, and the relative deduction will consequently be much greater.

We must find, therefore the average number of carriages and waggons in use for that district of the line in which the particular portion may be situated, or that which will produce the same result and be equally capable of proof, the average number of carriages or waggons propelled by the engine over each mile of that district, then the total cost of the repairs to such carriages and wag-

gons, and the total number of train miles run by them. And when the mileage within the parish is known, the cost within the parish, or the proper amount of allowance in respect of it, is matter of simple calculation.

It is altogether unnecessary, therefore, to enter into any nice calculation as to the actual cost of repairs to any particular carriage or waggon, unless it were with a view of showing that the average cost of repair per train mile run was incorrect either in principle or in amount; but as this is a fact ascertained by long experience, and a series of careful calculations, it can scarcely be supposed that its result would be controverted. The onus, however, of maintaining this proposition is necessarily cast upon the company. Neither could it practically be necessary to ascertain the precise number of carriages or waggons in any particular train. It is the average number only with which we are dealing, a matter almost as readily ascertained by the parish through which the trains pass as by the company itself.

The cost of guards may be also called a part of the locomotive charge. They accompany each train in its transit, and their services are required with the train and its load just as the propelling power of the engine. The attendance of a guard is one of the means by which traffic is attracted and receipts are earned. While the portion of gross receipts is being earned in the parish, the cost of the guard at that moment is properly set against

those receipts, whether derived from passengers or merchandize. Indeed we have only to refer to the mode in which the gross receipts, the basis of our calculation, have been estimated, in order to show conclusively the propriety of this mode of estimating the particular charge in question. As the receipt of a gross sum for each passenger conveyed is at the rate of so much for each mile traversed by him, so the payment of a gross sum to the guard is a charge upon each mile traversed by him, the passenger and the guard, the receipt and the expenditure being in the same train and traversing the same portion of railway at the same time.

Here, too, it may be observed, that, as in the case of the engine and the carriages, there can be no given proportion whatever between the amount of the receipts and the amount of this charge. A guard is equally required for the safety of the train, whatever may be the load and the receipts derived from it. Whether the train contains one passenger or one hundred, it is necessary that a guard should accompany it, and this relative deduction will be greater on a line, or district of a line, where the traffic happens to be inconsiderable.

The present will be the most convenient place for considering the eighth head of expenditure above mentioned; for the principle upon which it must be calculated applies, not to this head only, but to nearly all the other matters which have commonly been classed under the third head. Nor is it con-

fined to those only, but extends, as will presently appear, to several of the other material items of expenditure and deduction.

Among expenses usually included under the third head, are clerks, inspectors, porters, police, lighting and gas at stations, tickets and stores, all of which, however, are station expenses. They are the means by which a station is made productive, and without which it would be altogether useless. The rent of stations is only one other of those station expenses. And it is obvious that the principle upon which all such expenses are to be deducted must be the same, and applied in the same manner.

A railway could not be used, no receipts could be derived from it, but by means and aid of the stations. A station, therefore, is an expenditure which may be without the parish, necessary for keeping up a certain net annual value within the parish. As was suggested at the outset, it is a counterpart of the machinery and works erected in Thorpe for the purpose of raising the water to irrigate and make productive the land in Stoke; and in principle there is no difference whatever between the two cases. To apply the language of the Court of Queen's Bench, it is an expense which, wherever arising locally, is necessary to keep up the subject of the assessment at the value which is made the measure of that assessment.

As other specimens of expenses to which this principle is to be applied in the same manner, may be mentioned stationary or bank engines, rendered

necessary by steep inclines or junctions, and the extra cost of maintenance of any peculiarly expensive portion of way, as may happen with a tunnel, viaduct, &c. Such are the principal outgoings beyond the limits of the parish which may be essential to maintain the gross receipts within it.

As to all these, however, it by no means follows that it would be necessary in all cases to resort to accurate calculation. The candour and good sense of the parties, adopting the recommendation of the Queen's Bench, would be satisfied with a tolerable approximation; but in making any estimate as an approximation it will still be necessary to understand correctly the principles upon which it should be based.

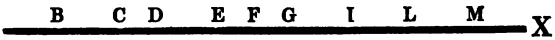
In all such cases the first question to be asked will be, Does the charge which is suggested as a proper subject of deduction assist in or contribute to the earnings of any part of those gross receipts within the parish which have been taken as the first basis of the calculation? And if the answer to this question be in the affirmative, the more difficult inquiry remains, In what proportion and to what extent is it so assisting, and how much of the whole expense incurred can fairly be charged against, or taken as deduction from, the receipts within the parish?—an inquiry less tedious and troublesome than would at first sight appear, and capable of a satisfactory solution. Indeed, the process by which the gross receipts in the particular parish will have

been ascertained, will have furnished the most important information required for conducting the inquiry; for that process will already have informed us to and from what stations all the traffic from which those receipts are derived is passing. When, therefore, any charge, wherever arising locally, is suggested as a proper subject for deduction, it can at once be seen whether any portion of the given receipts has been aided thereby, and if it has been, then the expense is to be charged on those for whose benefit it has been incurred, in proportion to the amount of benefit received by each. As, for example, in the case of a station and its expenses, *those station expenses are to be charged against the receipts which have been derived from those who have used the station,* and who, in the money paid by them for their transit, pay some entire sum, not only for their actual conveyance over the line, but also for the convenience afforded them by the stations at the points of arrival and departure. The necessary calculation in this case will probably be more easy, and capable of more exact accuracy, than in the other cases mentioned above. The case may be thus illustrated:—

A ——————————— X

Suppose the line of railway A X to have no station intermediate between those two terminal stations, the annual cost of which is 2000*l.*, or 1000*l.* for each station, and the receipts derived from the traffic to be 20,000*l.*; the whole of that traffic must have used both the stations: conse-

quently, 2000*l.* must be deducted from the gross receipts; or we may say that 18,000*l.* only has been received in respect of the line itself, and 2000*l.* in respect of the stations. Now the information afforded in the first instance, for the purpose of giving the gross receipts on the particular portion of the line in question, will of necessity have furnished the means of applying practically the above illustration of a simple case to any more complicated one that may occur; for the gross receipts were calculated as so much traffic passing between particular stations as must necessarily in its transit have passed over the particular part in question. To ascertain which with accuracy, as we have been already informed, requires only one half-hour upon a line from Paddington to Cheltenham. Thus, at the very outset of the inquiry, we have been informed how much of the gross receipts in the parish has been aided by each particular station. It remains only that the total charge of each of such stations should be ascertained—a fact always within the knowledge of the company, and, as hereafter shown, capable of easy proof; the total receipts benefited by the station ascertained also; and the amount of charge for the station upon the portion of the receipts in the parish aided thereby, will be ascertained by an easy sum. This would scarcely seem to need an illustration; it will be shown, however, in the following:



The parish in question here is B., the receipts in which are found to be 1800*l.*, made up as follows:—one-third from through traffic from A to X, one-sixth of traffic from A to L, one-sixth from A to M, one-sixth from A to C, one-sixth from A to D. The total receipts from traffic using station A are 100,000*l.*, and the total expenses there are 2000*l.* The total receipts from traffic using

Station C, are 10,000*l.*; expenses there, 1000*l.*

Station D, receipts, 8000*l.*; expenses, 1000*l.*

Station L, receipts, 5000*l.*; expenses, 500*l.*

Station M, receipts, 2000*l.*; expenses, 500*l.*

Station X, receipts, 100,000*l.*; expenses, 2000*l.*

Here we have every fact and figure sufficient for the most accurate calculation, and nothing more is required than a simple process of arithmetic.

For example: the whole of the receipts in B, viz. 1800*l.*, on the one side, are indebted to A; one-sixth of them, viz. 300*l.*, only to L; and the whole receipts at station A being 100,000*l.*, and the whole cost 2000*l.*, it follows, that as 100,000*l.* is to 2000*l.*, so 1800*l.* will be to x, the proper amount of deduction in parish B, for the expenses of station A. Again: the receipts in B, in respect of or aided by L, being 300*l.*, the whole receipts aided by L, 5000*l.*, and the expenses, 500*l.*, it follows, that as 5000*l.* is to 500*l.*, so is 300*l.* to x, the proper amount of deduction in parish B, for station L.

To say that in parish B, of which the receipts are made up as above, anything should be de-

ducted in respect of station F, for example, would clearly be erroneous; those receipts are in no way aided or affected by that station, and no charge can be made upon them in respect of it; all the traffic in B would have existed equally, and the same receipts would have been derived from it if no station F had been in existence.

It cannot be too often insisted on, that we are here dealing with facts and figures which are all known and ascertained beforehand. Every railway company knows the expense of each of its stations, and indeed it is impossible it should be otherwise when the nature of those expenses is considered. For example: the expense of station A consists, first, of the assumed rent, a station-master, an inspector, two clerks, ten porters, and six policemen, whose salaries and clothes cost so much per annum, gas and lighting, rates, repairs, and stores disbursed to it, besides some very trifling items which are ascertained with equal ease. This charge, therefore, which the books of the company will furnish in an entire sum, or which may be tested by proof of its details, can rarely be matter of controversy, while the other figures necessary have been ascertained for the purpose of estimating the gross receipts, namely, 1. The amount of receipts at each particular station; 2. The destination of the traffic producing that amount; and, as following from these two, 3. What portion of those receipts is attributable to the particular part of the line in question. Surely if these latter

results can be found from the books in half an hour, there is no modern accountant so obtuse as to require above a few minutes longer for the completion of the whole calculation. Practically, however, this process would be even more simplified; for if no general estimate upon this principle could be agreed upon, and it were found necessary to go through this proof as to the terminal and more important stations, and those immediately adjoining the part in question, it would probably be unnecessary to go further. The amount of receipts from the smaller stations at a distance would be so small as scarcely to affect the calculation to any appreciable amount, and might be dealt with in a general manner. But there is nothing which so much facilitates the settlement of matters by consent as the knowledge that they are capable of proof, if not consented to; and the proof, if required, in these cases, is attainable to the most minute particular.

It will probably be observed that there is an omission in the preceding calculation, as the receipts only at the stations have been taken, whereas the station is as much for the convenience of those who arrive at, as of those who depart from it, but which latter only pay at the station. The answer is that no further information than that above suggested would be required to complete the calculation to this point; it would be merely to carry on the sum from the figures which we already have; but practically it becomes unnecessary, from a

fact which is proved by the experience of railway working, and which would very much assist the calculation before suggested, for it is found that whatever number of passengers depart during the year from A to X, the same number, or so nearly so as to make an unimportant difference, will depart during the same time from X to A. Thus any two particular stations on a line of railway, between which any traffic is going on, are mutually indebted to each other so far as the departure and arrival of it. And if 100*l.* has been received at A in respect of traffic destined to arrive at L, and so requiring to use both those stations, 100*l.* or nearly so will have been also received at L in respect of traffic destined for A. If this is found to be the case with sufficient truth to form an estimate, which is all that is practically required, it would be needless to take for our calculation anything more than the station receipts.

We pass on to the other outgoings, which are to be calculated in the same manner, or by what may be called the station or local charge principle; for though the term local charge may be in strictness properly excepted to, since the charge must be distributed throughout the line, yet the expense in these cases is actually incurred at some particular locality, however it may be distributed subsequently. Such outgoings as already observed are inclines, stationary engines, and any particular portion of the line which from some peculiar circumstances may be far more than ordinarily ex-

pensive; as to which last, however, it may be observed that unless under very peculiar circumstances, it would be needless to bring them into account, and that in the case of one of our most important lines where this matter was suggested, it was considered that no such cases existed of sufficient importance to make it necessary to give them any separate consideration. We take therefrom the case of an incline, where it is necessary to have a stationary

engine, a case which appears often to have been alluded to in the course of argument in the Queen's Bench. The railway as before is A X., the parish in question B, and the stationary engine at H, and first suppose the simplest case. The information as to the gross receipts has shown that all the receipts in B are derived from traffic passing between A and some station short of H, then the expense of the engine at H has nothing to do with the inquiry, for it has in no way contributed to the receipts in B, so that no part of those receipts can be charged with it. Although situate upon a part of an entire line of railway A X, yet the same receipts in B could have been earned if no such expense had existed. On the other hand, suppose the receipts in B to be derived wholly from through traffic passing from A to X on to some points beyond H, or that no station existed between A and I, then a share of the charge of

the engine at H would have to be distributed over, among other parts, the part in B, no part of the receipts in which could have been earned without it. Now all the intricate cases that could occur practically, are cases between these two extremes, but not differing from them in a principle, which is obviously nothing more than the station principle already explained. But let a more complicated case be supposed. The inquiry now respects the line in parish D, the gross receipts within which are found to be 1800*l.*, which is found to be made up as follows: one-third through traffic from A to X; one-sixth traffic from A to M; one-sixth traffic from C to I; one-sixth traffic from B to X; and one-sixth traffic from A to E; the annual cost of the engine at H is 2000*l.*, which has aided the transit of traffic on the line, the gross receipts derived from which are 100,000*l.*; in other words, the gross receipts earned in different parishes on the line to the amount of 100,000*l.* have been aided by the engine at the incline, and of these gross receipts thus indebted to the engine five-sixths of the receipts in D must form a part, for all the receipts in D except one-sixth is derived from traffic which has been aided by the engine at the incline. It follows that, as 100,000*l.* is to five-sixths of 1800*l.* (1500*l.*) so is 2000*l.* to the amount we have to find, as that which may fairly be charged as a deduction from the gross receipts in parish D. The remainder of the charge has to be distributed among the other parishes benefited

by it, just in the same manner as in parish D, with which distribution however D is not concerned.

As this is the uniform principle to be applied in every case of this kind, nothing would be gained by multiplying illustrations. *The principle is nothing more than the charging an expense upon those for whose benefit it has been incurred in proportion to the benefit which has been derived by each,* and it is a principle which is capable of being applied, if necessary, with considerable accuracy. It was probably some notion of the correct principle in those cases which led the author of a work on railway rating to suppose that all the expenses of a railway bore a fixed proportion to the receipts, and that the whole question could be solved by a process of calculation, without any reference to the facts of the case.

In the case of branch lines, and under some peculiar circumstances, there may be other modes in which the local expenses may be estimated with more or less approximation to accuracy, depending very much upon the particular nature of the traffic. Thus in some cases it has been found that to take the station expenses existing upon the branch itself, and to apportion them exclusively upon the branch, would be a sufficiently fair approximation to the truth; but this and every other mode, however just the result may happen to be, are only substitutions for the correct mode before explained, and will probably be more or less accurate in proportion as

they may approximate to or depart from that mode of calculation.

The remaining charges, which have been commonly included under the third head of deduction, are for the most part of such trifling amount as not to repay the trouble of separate calculation: such are advertising, postage, travelling and medical expenses, of which not only any particular item, but the whole of them, might probably be omitted without producing any real difference, certainly without producing any difference worth contesting. In the case of a particular railway where the deductions from the receipts of a mile were very carefully estimated, and where such deductions amounted to about 1700*l.* the deduction claimed for the whole of the above items amounted only to 12*l.* But before considering these amounts, which we shall do in connexion with No. 7, or direction and office expenses, it will be best to dispose of No. 4.

This head of deduction for compensation returns and allowances arises out of the legal liabilities to which a railway company is subject when an accident occurs upon the line, or when parcels or luggage are detained or lost. Good management may reduce the charge, but no management could obviate it altogether. Compensation payments to persons injured, or to the relatives of persons killed, become necessary in every serious case of accident or collision, while compensation payments on account of losses are inseparable from the trade of

carriers. Neither of these kinds of payment, however, is essentially an actual annual expense, but the deduction is claimed for a yearly average of an occasional expense. The estimated average, however, is properly deducted in each year, rather than the whole cost in one year whenever it occurs. This is upon the same principle as the allowance for repairs, &c. always made in the rating of house property where the actual expense probably is incurred only once in ten, or once in seven years, or perhaps at more uncertain intervals, but the average allowance in respect of it is made yearly. So with these compensation expenses; they are rendered necessary at uncertain intervals by accidents which may happen upon the line at uncertain localities, or by losses for which the company must pay. The books of the company would easily disclose the proper amount of the gross annual average in respect of these, and the proper mode of distributing it among the several portions of the line cannot be doubted. The amount of the charge has a direct relation to that of the gross receipts, for the average amount of compensation payable will be more or less in proportion to the traffic:— As, for example, if an accident occurs to a train conveying a hundred passengers, the chances are that the amount of compensation payable to the injured parties will be five times greater than if it had occurred to a train conveying twenty only, and so in any proportion that can be supposed. The chances of an occasional loss of luggage, mer-

chandize, or parcels, must also, of course, be proportioned to the different quantities conveyed. It follows, therefore, that so soon as the proper amount of the gross annual charge upon the receipts of the whole railway in this respect has been ascertained, a portion of it should be charged upon the particular portion in the parish, bearing the same proportion to the entire charge as the receipts in the parish bear to the entire receipts.

To this same mode of deduction may properly be referred two trifling items already mentioned as included in the station principle, if the course of business on the railway, as may very possibly be the case, render the calculation of them by the station principle less easy. These are tickets and loss on light gold, the deduction for which would of necessity be in direct relation to the gross receipts, the loss on light gold being so much out of every thousand pounds, or other definite sum received, and the tickets being required in greater or less numbers in proportion to the merchandize or passengers conveyed; but, as already observed, the effect on rateable value produced by such items is very small.

The charge for No. 5, Government duty, needs no comment; it is a definite portion of the receipts wherever earned, and when the amount of the receipts in the parish has been ascertained, it is a simple deduction to be made from them.

Neither can any controversy arise as to No. 6, the proper deduction in each parish on account of

the rates, which are peculiarly a parochial matter, and the amount of which will vary considerably in the different parishes on a line of railway. In this respect each portion of the line is of greater or less value in the same way as every other kind of property, in proportion as the parochial burdens of the parish where it is situate are greater or less in amount.

The inquiry must be conducted to its close, and the rateable value in other respects ascertained, before the sum which will be payable for the rates can be actually deducted. The only inquiry necessary will be how much in the pound the rates in the parish annually amount to, and with that information the proper deduction will be at once determined.

To No. 7, direction and office expenses, must be added the law charges and the small items mentioned as remaining from the third head.

It is impossible to consider these expenses in any other manner than as a charge upon the entire railway, and to be divided over each mile of its extent; for neither the amount of traffic, nor the number of train miles run, nor any other circumstance than the greater or less extent of the line itself, will cause any appreciable variation in any of the items. They will fall somewhat heavier on each mile, if the railway extended for one hundred instead of two hundred miles, for neither the directors or secretary or chief officers of a line of two hundred miles would be likely to have twice the

salary of those for a line of one hundred. In this respect each mile, and the portion in each parish, has the benefit of its connection with an undertaking of more or less magnitude. The amount of these expenses is however trifling, it being found to be about 12*l.* per mile only in a case where the whole estimated deductions were 1700*l.*

Of these items the law expenses are of that kind for which, like the compensation expenses, it will be necessary to find an annual average, for no other course could effect a permanent settlement. These are most correctly calculated according to mileage; it is the length and extent of line which, running through different localities, brings its owners into occasional collision with neighbouring landowners or companies, and by which the amount will be regulated. Exception may perhaps be taken in particular cases to the mode of calculating this expense, that it had been incurred for the benefit only of some particular portion of the line. But it must be remembered that it is the average which it is proposed to take, and that such a mode, while it obviates the objection of throwing a large burden, incurred it may be for future benefit, on any one particular year, obviates at the same time the objection, that the charge has been incurred for any particular part.

The last head of deduction, or the fund for reproduction of permanent way, was in the earlier cases not allowed, on the ground that no such fund was actually set apart by the company. But

this ground was found to be untenable so long as such an allowance was made generally in the cases of houses and buildings, without any inquiry made whether a fund was actually set apart. It would be foreign to our purpose here to discuss how far such an analogy holds good. We take the law as settled by the last decision. But how is the amount of the deduction to be estimated? It must be admitted that, without a larger experience than has been yet attained, the question of the general amount of this deduction must be very speculative, though the mode of distributing it, when found, is sufficiently obvious. For the general amount of deduction proper to be claimed in this respect, recourse must be had to the opinions and evidence of contractors and engineers; and that amount being of necessity so much per mile, the proper amount of deduction in the parish will be at once obtained. In the reported case of the Queen against the London and Brighton Company, the sessions found, as a fact proved before them, that the sum of 100*l.* per mile would be a fit sum to deduct for the purpose of countervailing the depreciation that takes place in the permanent way, so as to maintain it in a state to command the rent aforesaid, supposing the Court of Queen's Bench should be of opinion that any deduction ought to have been made in respect thereof; while in a case recently decided upon an appeal at the Wiltshire sessions, the sum of 85*l.* per mile was claimed as deduction in this respect, and apparently was ad-

mitted by the Bench, after evidence on the subject had been adduced.

We have now completed the consideration of all the expenses that would be required in order to obtain the assumed gross receipts; all those expenses about which any question may arise being capable of fair estimation either by

The maintenance of way, or mileage deduction,

The locomotive account deduction,

The station or local charge deduction.

To which may be added, if necessary for the small amounts to which it can be applied, the deduction in proportion to the receipts.

Though the calculations are thus made differently, they are different only in order to arrive correctly at the same result, for the object has always been the same—to find out in what proportion those expenses have contributed to the receipts, or how much those receipts are indebted to the several expenses. To apply the words of the statute, these are the expenses necessary to maintain the railway in a state to command any assumed rent; and we have in effect been in the position of a tenant, considering the expense he must incur, that he may be able to judge what rent he could afford to give.

These, however, will not be the sole matters for his consideration. The further matters to be considered may be called the deductions of the second class. For of the gross receipts of a railway which may be found to remain after the above deductions, a portion only would represent the rent or land-

lord's profit, which a tenant would be willing to pay for the occupation, and which portion alone is rateable. Nor could that be reasonably ascertained until the portion which represents the tenant's profit fairly to be expected from the application of his capital, stock, and skill to the subject-matter, and interest on the capital to be employed, had been considered.

The basis of the calculation necessary for estimating such allowances is simple enough; but the amount to be fairly deducted upon that calculation is a matter of opinion, upon which those best able to decide considerably differ.

The amount of capital required to be employed will necessarily be the first consideration; while the manner in which it must be invested, and the nature of the stock required to be purchased, may be supposed to have the most important influence on the decision of a tenant, in estimating the profit to be expected from its employment, and consequently the amount he could afford to pay for rent.

This capital must be invested in a stock of engines, carriages, waggons and machinery, necessary for the proper working of the line; or, as we are here dealing with an actual state of circumstances, and with the receipts actually ascertained, the capital will be represented by the stock and machinery actually employed upon the line, in order to produce the actual receipts. Probably this stock will be greater or less upon different railways, ac-

cording, in some degree, to the amount of traffic, and for the same reason it may be greater or less upon different districts of the same railway, especially where such railway consists of a main trunk and branches, and where the stock employed upon the branches is kept distinct in actual working. Indeed no serious difficulty appears to have arisen in this first step of the calculation. The amount of stock actually employed can always very readily be ascertained, and its distribution upon different districts of the line, if any such is made, is a fact which is ascertainable by evidence, and can scarcely be productive of controversy.

Practically it would probably be found that the stock of engines is distributed on districts where they are employed exclusively or nearly so, while the carriages, though generally so employed, are not so exclusively. But this would have no effect upon a calculation which must necessarily be made upon an average. For the same circumstances which at junction L (see above) would occasionally require that for convenience one of the carriages of the branch line should continue its course upon the main line, would also occasionally require that one of the main line carriages should continue upon the branch. And by those acquainted with the working of the different parts of a line and their traffic, the average amount of stock required can be ascertained with considerable exactness, and indeed it will be remembered that the average number of carriages or waggons employed upon each district

has been already required to be known in estimating one of the deductions of the first class. But the matter of controversy on this part of the case has generally been as to the mode in which the value of this stock is to be estimated; whether at the cost price, or at the depreciated value at the time of making the calculation. When the purpose for which it is to be taken is considered, it would seem that neither mode was free from objection. The cost price would certainly be no criterion, because a tenant considering at the present time what capital he must expend to rent the line, could not be supposed to consider some price which engines and carriages ten years ago were purchased at. Whether it were greater or less than that of the present time, would be immaterial to the actual case. On the other hand it would by no means follow that he could purchase depreciated stock far below the cost price of the present time, which could serve his purpose. We are speaking of articles which have no market, of which the demand and supply, the purchasers and vendors are limited, and which are absolutely not dealt in at second-hand. If any existing railway requires stock, they have no choice but to go to the manufacturer and order it, or else to manufacture it for themselves. A proposed tenant would be in the same condition, and the proper mode of estimating the value of the rolling stock would therefore seem to be to take the price at which efficient stock sufficient for the working of the district could be

purchased or manufactured at the time of making the calculation.

It may be said that as we are dealing with an actually existing state of things, we should take the actual present value of the stock upon the line. But the effect of that suggestion, if fully carried out, would be that we should have to take the cost price of it, and thus perhaps give too large a benefit to the company. The company originally, it would be fairly said, invested a certain amount in their stock, and that amount is not rateable; and the result of taking some depreciated value from the cost price would evidently be, that, as the stock becomes more worn, the rateable value of the line would rise in amount; in other words, that the tenant would give more rent in proportion as his stock becomes depreciated, a result, the truth of which could never seriously be maintained. And who besides is to estimate the amount of depreciation in an article which is not marketable? Such amount, at the best, must be mere matter of speculation, and it might well be that in consequence of some great difference in the price of materials, so far from there being any depreciation, there might be an actual increase in value upon the cost price.

The capital required for investment in the stock in trade being thus ascertained, the interest upon it must be first deducted; and then follows the main subject of consideration—what amount of profit would be looked for by a tenant, as a sufficient probable inducement to him to invest his

capital in a trade of this peculiar nature? For this must be withdrawn from the receipts before the estimate can be formed of probable rent. The answer to such a question must of necessity be very speculative, and founded upon uncertain data. The amount allowed in different cases by consent, or by the Court of Queen's Bench, or by arbitrators, appears to have varied greatly, as might have been expected in a question which is certainly not one of law, and where there is nothing certain to guide the decision. As the amounts allowed in decided cases have varied from ten to twenty per cent., it may be taken that we are confined to these limits, so that no parish would now venture to insist on an allowance of less than ten, nor any company upon more than twenty per cent. But beyond this it may be said, that we derive no guide from authority. It may be some guide, however, to consider, what a party who embarks his capital in a more ordinary kind of trade would look to as a remunerative return for the employment of his capital and skill, after allowance made for the interest which that capital might produce, if invested, free from risk and trouble; and when some answer to this question has been obtained, as definite as the nature of it will allow, there arise some further considerations, which are applicable exclusively to the particular trade in question. The most important of these appears to be, that the investment must be made in a stock which may be said to have no marketable value. A

party embarking his capital in any ordinary trade, may consider, that if he wishes to relinquish it, that stock, at whatever reduction, is marketable, and may readily be disposed of. But the stock required for a railway is, for any other purpose, absolutely valueless. The stock on almost every important line is of a kind peculiar to itself, and supplied under contract in such a manner as would render it very difficult for one company to find a purchaser in another. The tenant, therefore, who invests in railway stock, must make up his mind to continue his speculation, whatever may be his annual loss, or whatever adverse circumstances may occur, or he must submit to lose the whole value of his capital. But there is another circumstance he must consider, the effect of which is equally unfavourable; for his stock, when purchased, is liable to be depreciated to an extent of which no estimate can be formed by new discoveries in machinery, and by improvements which it would be impossible to neglect. His trade, it must be remembered, is still but in its infancy, and every improvement in locomotive engines or carriages, or in any way connected with them, must be adopted by him as soon as discovered, or he will be left behind in the race of competition. A serious accident seldom occurs without bringing to light some supposed defect, and the public call for an alteration, regardless even of its necessity, still more regardless of the expense and loss thus entailed upon the company;

yet however unreasonable the demand, it may be impossible to resist it, without incurring, perhaps, a greater loss.

Such are some of the considerations which may be supposed to influence parties who would be disposed to embark their capital in an enterprise of this novel nature; and which would make it necessary that they should be tempted to do so by the anticipation of a high per-centage on their capital, or which, in other words, would lessen the rent, which, but for such considerations, they might be disposed to give; and precisely the same considerations must be applied to the actual state of circumstances.

A third allowance of this second class has usually been made for depreciation of stock, which has been estimated and allowed in different cases at from two and a half to twelve and a half per cent.; for, apart from any sudden depreciation, such as suggested under the last head, it is found that, notwithstanding every repair, a gradual depreciation to this extent is annually taking place upon an average; and this indeed must be inseparable from the nature of the stock itself, and from the wear and tear to which it is subjected.

These three allowances from the second class, for interest of money, for trade profits, and for depreciation, are not only all more or less speculative, but they are all very closely connected with each other; so that in proportion as the first and third are made larger in amount, the second might rea-

sonably be made smaller. Apparently, therefore, we gain nothing by considering them separately, as has commonly been the case heretofore. And it is suggested that it would be less speculative to consider them collectively as one allowance, without discussing hypothetical questions as to a supposed rate of interest, which must be ever varying, or a depreciation which it must be impossible to calculate with any approach to accuracy. Apparently nothing would more conduce to the settlement of these questions between the railway companies and the parishes, than that the proper amount of this aggregate allowance should be arbitrarily fixed, and abided by. The considerations already mentioned seem to point to twenty-five per cent. for this aggreate allowance as a fair compromise, to which the parishes could certainly make no objection, and which the companies would find it their interest to be satisfied with. In some cases the amounts claimed and allowed may have amounted to nearly forty per cent. in the aggregate, as for example in the case of the Queen against the Grand Junction Company, where the actual amount claimed and apparently allowed without opposition was 37*l.* 10*s.* per cent. The companies might probably succeed in establishing that their trade profits alone ought not, under all the circumstances of the case, to be allowed for at less than twenty per cent.; and the result of experience year by year seems to show that considerations which unfavour-

ably affect the trade of railway companies have not yet been sufficiently appreciated.

But the evidence, whether of merchants or manufacturers, contractors or accountants, on such subjects, would probably be contradictory and unsatisfactory. Neither could any arguments, though derived from actual experience, be conclusive.

The difficulty in respect to these deductions of the second class, whatever it may be, is inseparable from any mode of railway rating that has been yet suggested; for the exemption of stock in trade from rateability compels us in this particular instance to attempt to solve one of those difficulties which practically were found so great as to make the exemption necessary.

The allowance of these deductions of the second class may give rise to the apparent anomaly, that although a railway company may be deriving a profit from their trade, so as to enable them to declare a dividend, there may nevertheless be, strictly speaking, no rateable value to their property. In other words, the trade may be sufficiently remunerative to induce a party to embark his capital in it, supposing no rent to be payable out of it, but could not afford the two profits, or a payment of anything to the landlord in the way of rent. Thus, if the total capital of a company were 100,000*l.*, of which 10,000*l.* was represented by the rolling stock, the trade profits upon which were twenty per cent., the company might well divide two per cent. upon the

entire capital, though no profit was realized in the way of rent. In such cases, however, the occupier cannot escape rateability. The ordinary rateable value of the land, if occupied in the usual manner for agricultural purposes, would, in such a case, it is presumed, be properly adopted.

APPENDIX.

NOTE.—It appeared unnecessary to encumber a short treatise on the practical application of the law with a long appendix of statutes and cases affecting more or less the law of rating. The decisions in those several cases establish no new principle, and generally avoid dealing with the practical application of the law. But it was thought advisable to append the last decision of the Court of Queen's Bench, with a few short extracts from cases previously decided, which are more especially applicable to the foregoing pages.

FROM 6 & 7 WILL. IV. C. XCVI.

An Act to regulate Parochial Assessments.

. . . . . No rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent: Provided always, that nothing herein contained shall be construed to alter or affect the principles or different liabilities, if any, according to which different kinds of hereditaments are now by law rateable

REX *v.* INHABITANTS OF KINGSWINFORD.

Queen's Bench, 1827.

BAYLEY, J.— . . . . . A canal company is liable to be rated in respect of the land which they occupy in every parish through which the canal passes, and for that value which the land there produces. Where there is a long line of canal extending through different parishes, although the money produced by the tonnage collected in all the parishes constitutes one common fund, out of which all the expenses are to be borne, still the proportion which those expenses may bear to the tolls collected, even in cases where the rates are the same along the whole line of the canal, may vary in different parishes. The traffic on this canal may be greater in some parishes than others, or the rates may be unequal, and thus the net profits, which constitute the value of the land used for the canal, may vary in different parishes. There are twelve miles in length of the canal in the parish of Kingswinford. Assuming that the different branches of the canal had been made under one act of parliament, I am of opininn that the company ought to be rated in each particular parish in proportion to the profit which they derive from the land there used by them for the purpose of the canal. If a canal runs through six different parishes, and there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls. But it may happen that in that part of the canal situate in one parish, there may be double or treble the traffic which there is in any other of the six. Why are the other parishes to have any part of the tolls earned in that parish? The land in those parishes contributes nothing towards earning the sum derived in

the other parish from the use of the land there. The true principle is this, a canal company is to contribute to the relief of the poor in each parish through which the canal passes, in proportion to the profit which they derive from the use of their land in that parish. If the profit arising from a given quantity of land vary in different parishes, the rate must vary in the same proportion. The whole rate will be payable out of one common fund. But then each parish will receive from the company a sum in proportion to what the land in that parish produces. If in this instance this rule has the effect of making the rate in Kingswinford higher, it will also make the rate lower in other parishes.

Rex *v.* Inhabitants of Lower Mitton.
Queen's Bench, 1829.

Bayley, J.—It is now fully established that the proprietors of a canal or navigation are rateable as occupiers of the land covered with water in the particular parish in which the land lies, and it follows from thence, and it was so decided in Rex *v.* Kingswinford, that they are rateable in each parish in proportion to the profit which that part of the land covered with water which lies in the parish produces. If it is more productive than other parts of the canal, either because there is more traffic or because larger tolls are due upon it, or because the outgoings and expenses there are less, it should be assessed at a higher proportionate value.

Regina *v.* South-Western Railway Company.
Queen's Bench, 1842.

Lord Denman, C. J.— . . . . . Will it make any difference in the principle that the railway is in more

parishes than one, and that we are now dealing with a parish in which, so far as appears, there is no station-house, or other appendage, to the railway? We think not. The subject-matter of the rate, in any particular parish, is no doubt the beneficial occupation of the land there, and you cannot draw into the rate the value of the occupation of buildings elsewhere; yet, as you are to rate on the value in the parish, however occasioned, you cannot strike off any portion, because it would not have existed but for for this occupation of buildings in another parish; still it exists, and in the parish, and, therefore, cannot escape the rate there. Suppose A. and B., occupying an entire tenement, as an inn, in two parishes, C. and D.; the lodging part of the buildings in C., and the tap and stables in D.; there would be two rates; but could the owner say in C., True it is, that which I occupy here, is, de facto, more valuable than a mere dwelling or boarding-house; but that is in a great measure because it is connected with the tap and stables in D.; you must reject whatever is referable to that connection, and rate me here as if I occupied an inn without tap or stables; you must suppose only a demise of the parts in C., and rate upon a rent to be given only for what that demise would pass to me?

The answer would be, if the occupation of this part is in fact of a certain increased value, whether that increase be derived in part or in the whole from the other, is immaterial. Wherever the valuable occupation is, there the occupier must be rated in respect of it.

Then, in the present case, it would become a question of fact. Is the land occupied in the respondent parish by the railway more valuable in fact to the occupier, by reason of this occupation, together with the

stations, &c., elsewhere, and the general purposes to which altogether they are applied? We suppose that, without doubt, this would be answered in the affirmative. Sever it from them, and three or four miles of railway, unapproachable, leading from and to no place, having no communication with any termini, would be absolutely useless and unproductive. Give them the connection which in fact exists, you give them a value, increased indirectly from the stations, warehouses, and portions of the entire line in other parishes, and directly a general traffic, to the profits derived from which everywhere they are indispensable contributors, and through one part of which they directly come.

We are thus led to the conclusion, that, if this case had been to be considered before the passing of the Parochial Assessment Act, the principle of rating upon which the respondents have proceeded would have been found to be the true one. Has then the statute made any difference in this respect? Now, without having recourse to the express language of the proviso, it is clear that the enacting part introduced no new principle of rating. From the time of the decision of The King *v.* The Trustees of the Duke of Bridgewater, before referred to, it had been understood generally, that, fraud apart, the rent, whether the occupier was the owner or only the tenant, real in the former case, supposed in the latter, was to be the criterion of rateable value.

Both parties in the present case appeal equally to this criterion. The difference between them is, there being no real demise, what is to be brought into the supposed demise? and as to this, it is obvious the statute can make no difference, the only question between the parties being as to the proper mode of applying the admitted principle.

In cases upon rating, in which the great objects are to procure equality and to bring every thing into contribution which ought to share the public burthen, it is esential, as Lord Ellenborough said in The King *v.* Bradford, to regard the substance and not the form. "We must," said he, "judge of things as they really are, and not as they appear to be; and therefore we are to consider here, whether this be not substantially one entire rent in respect of one entire subject, though artificially divided into several payments." If we deal with this case in the same sensible and just way, we shall be at no loss to see that to break up this entire line into parochial portions, and then in imagination sever all and each from the buildings which the occupiers occupy together with it de facto exclusively, and under the authority of the same statutes passed in furtherance of one great scheme, and then again in imagination to sever both from the traffic which the occupiers carry on, in, by, and throughout the whole de facto exclusively, and for the sake of which they have made, built, and occupy the whole, is to apply the principles of the statute in form and not in substance, and so as to lead to a mere evasion of its object.

If it be said, that not only in law but in fact the company may lease their line and become mere carriers on it; or that they may demise their buildings and carriages, cease to be traders, and become mere occupiers of the railway; the answer is, that the present rate, with which alone we have to deal, is not made on either of these states of facts; that, whenever either shall arise, the rate must be altered to suit it; but that even then, in all probability, the result to the parishes would be much the same, the rate only would become apportionable between two classes of occupiers instead of being charged on one.

Allowance in respect of Depreciation of Permanent Way.

Regina *v.* London, Brighton and South Coast Railway Company.

Queen's Bench, February 22nd, 1851.

Coleridge, J.— . . . . . The second question submitted to us is on the right to a deduction from the rateable value, in order to counteract the depreciation which takes place in the value of the permanent way, and to maintain it in a state to command the supposed rent, which is the measure of the assessment. As a general principle, we do not understand the respondents to deny that a deduction for the purpose here stated, and as stated, is proper to be made: the objection which they raise to the particular claim of the company is founded on two circumstances, first, that the proper provision is already made under a head, called "working expenses," to which we do not agree; secondly, that if more be at any time necessary, the necessity has not yet arisen, because the company have not yet incurred the expense, nor laid by from their receipts any sum to meet it when it shall arise. This question, under nearly the same circumstances, came before the Court in the case of The Queen *v.* Great Western Railway Company, and was decided against the company; but we are desired to review that decision.

We then said that we thought such an expense, as distinct from mere annual repair, fell under the same principle, and was an unobjectionable head of deduction

when it should either be actually incurred or provided for; but we thought, that as no allowance would be made for annual repairs in any year in which no repairs took place, so none would be made for this annual depreciation in value, unless at least there were funds set aside to meet it when it should be thought expedient to do the work of renewal. In that case, too, there was a further circumstance which had some influence on our judgment, and which is not found here, that whatever expense had been in fact incurred, the company had chosen, rightly or wrongly, at all events conclusively on themselves, to make a charge on their capital, and not on their receipts, converting it therefore into landlord's improvements rather than tenant's repairs.

The difficulty which we now feel arises from the same fact, that no charge has, in fact, either by way of outlay or setting apart, been made on the company's receipts. If the depreciation be, as probably it is, both certain and capable of an annual average, though not proper to be, in fact, repaired annually, we think it should be met by laying by a certain sum annually; and that if the company, in order to swell their dividend, or for any other motive, neglect to do so, they act unlawfully in one of two ways: either they make a dividend which in substance impairs their capital, because they throw a burden on the latter which ought to be deducted from the former (and this is in violation of the 193rd section of their act); or they cast the whole burthen of a heavy restoration of the permanent way on the dividend of some future year, to the manifest injury of the then proprietors, and for the unfair benefit of the present body. In such case, too, there may possibly arise some difficulty in resisting the claim

to be allowed the whole deduction from the rate of the year in which the expense shall be actually incurred, although it would be manifestly unjust to allow it twice over, first in detail annually, and then in the lump. This difficulty was met in the argument by instancing the ordinary case of house property; as to which a larger difference is made between "gross estimated rental," and "rateable value," than in the case of land, on account of this very annual depreciation of the thing itself, and the necessary prospective restoration; and yet it was said you never inquired whether the owner did, in fact, lay by a portion of his annual rent to meet that distant expense.

We have considered this question with much attention, and, upon the whole, we think that the company are entitled to a deduction on this head. We cannot make a substantial distinction between this and house property, or any other of a perishable nature, which must require renewal. And, although we think that the company ought to set apart the sum which they claim to deduct, we cannot compel them to do so in this indirect way; and we think that whenever the time shall come for actually making the restoration, they will be estopped from claiming more than that annual deduction which they now insist on, exactly as a landlord could not claim to deduct the expense of restoration made by him of a house. The rate, therefore, will be amended by a reduction according to the calculation made by the sessions in this respect.

The third question arises on what is called the exchange toll. The substance of the transaction between the appellants and the South-Eastern Company, out of which this arises, appears to be this: that the traffic of the latter is to pass free over a certain portion of the

line of the former, in consideration of the traffic of the former passing free over a certain portion of the line of the latter. A certain distance, between two and three miles, of the appellant's line, within the parish of Croyden, is affected by this arrangement. We think that the sessions rightly decided this to be rent in kind earned by this land: it seems to be exactly the same in substance as if so many tickets were daily issued without money paid.

REGINA *v.* GREAT WESTERN RAILWAY COMPANY.
Queen's Bench, February 10th, 1852.

Lord CAMPBELL, C. J.—This case was argued before us in June last. Soon afterwards we stated the extreme difficulty we felt in satisfactorily applying the provisions of the Parochial Assessment Act to the solution of the questions which it presents for our decision, and we expressed our conviction that they required the interposition of the legislature, rather than the judgment of a court of justice. Parliament, however, has not thought it right at present to deal with these questions, and it becomes our duty no longer to delay giving judgment, which the parties have a right to demand at our hands. These considerations, however, obviously make it desirable that in our present judgment we should limit ourselves as closely as we can to the decision of the points which necessarily arise, and govern ourselves strictly by the Parochial Assessment Act, and the principles laid down in former cases.

The rate in question is imposed on the appellants in respect of their occupation of two miles and a half of the railway in the respondent parish, and these two miles and a half are part of a line rather more than twenty-five miles in length, constituting what was origi-

nally intended to form an independent and entire railway, and to be called "The Berks and Hants Railway." It is now, however, what we will call a branch of the Great Western Railway, owned and worked by the appellants. Whether for the purpose of this rate these two miles and a half are to be considered as a part of this branch, treated in most material respects as an independent whole, or whether as part of the whole Great Western Railway, including therein the branch, without any distinction between branch and trunk, will be one of the most important points for our consideration. The appellants proceed on the former, the respondents on the latter assumption.

We think that it will clear our way, to adopt, in the first place, for the sake of argument, the assumption of the respondents. Both parties have agreed that it is important to settle four points as cardinal to the decision of the case. First, the total gross annual receipts of the appellants from the whole line, including both trunk and branch; secondly, the total gross annual receipts from the two miles and a half; thirdly, the allowances and deductions which are to be made from the first-mentioned item, so as to give the net rateable value of the whole line; and fourthly, the net rateable value of the two miles and a half. With respect to the first two of these they are agreed; and although there be a difference as to third, it is not so much in principle as in matter of fact; this difference we will settle first. The appellants, in addition to allowances for annual repair of rails and framework, and of moveable stock, claimed to be allowed two specific sums for their ultimate renewal and reproduction.

We feel the difficulty, which exists in theory, with regard to this claim; but we fully considered the sub-

ject in coming to our decision in The Queen *v.* The London and Brighton and South Coast Railway Company, and we adhere to that decision. It is not necessary, indeed, to reconsider it now, for the respondents do not dispute it, contending that they have already made those deductions in the allowance for annual repairs. But as this allowance does not equal in amount the sum of the allowances which the appellants have claimed under the two heads of annual repair and ultimate renewal, and as no objection is or could properly be made before us on the grounds of excess in their calculation, it is clear that substantially this allowance has not been made. Upon this point, therefore, our decision must be for the appellants. They admit, indeed, that they do not annually set aside any sum to form a distinct fund for this renewal and reproduction, but the case finds that they retain out of their annual revenue a reserve fund for all contingencies, including these items among them; and further, that although by annual repairs and partial renewals, both the rails and the moveable stocks are maintained in an efficient state, yet this will not supersede as to either the necessity of that fundamental renewal and reproduction for which these deductions are claimed. We consider, however, this question concluded by the decision referred to, and the effect of this would be, at all events, to reduce the rateable value in the respondent parish from the first to the second sum agreed to in the case, namely, to 254*l.* per mile.

We have now then three points out of the four settled: The remaining question is, what is the net rateable value of the two miles and a half? Now as the net rateable value is that which remains of the gross receipts after all just deductions are made, it might

seem at first sight that we might confine our inquiry to the two miles and a half, and that we only incumber the investigation uselessly by introducing into it any consideration of the gross and rateable value of the whole line. But the circumstances of a railway make this absolutely necessary. The inquiry may become, and undoubtedly does become, more complicated and difficult thereby, but it would be wholly incomplete and illusory, even in its results, unless we did so. Of the outgoings of a railway some are general, having no more connection with or influence on one part of the whole line than any other, incurred for the sake of the whole line, and contributing to the profits everywhere. Of course these must be distributed, and to every mile must be apportioned some share, on whatever principle the apportionment is to be settled. Some, again, seem purely local; a tunnel here, an inclined plane there (we purposely mention striking and definite peculiarities), yet even these are contributing to the earnings everywhere. Without these the traffic on either side could have no existence. It would be wrong to set these wholly and exclusively against the receipts earned in the same part of the line. We need not dwell on this, because in principle some distribution is on all hands agreed to be necessary; the only difficulty is, in determining what is to be adopted for making it justly,—a difficulty we believe actually insurmountable, in fact, if strict mathematical accuracy were insisted on. It is our business, however, only to lay down the general rule, and in applying it, much must be left, not only to the experience and acuteness, but also to the good sense and good faith and candour of the parties concerned, whose interests will be found in the end to be best consulted by this mode of dealing.

How then are the deductions from the total gross revenue which constitutes the difference betwen it and the total net rateable value to be apportioned, so as to arrive at the actual sum which constitutes the rateable value of the two miles and a half? There is no difficulty in giving the first answer; indeed, principle and authority leave us no option. It must be done by acting on what is called the parochial principle. We are dealing with a parochial question,—with one in which the interests of the several parishes on a line of railway are quite distinct. We are to ascertain what expenses are incurred in earning the gross receipts on the two miles and a half; what charges, parochial or otherwise, they are liable to; what is fairly to be deducted for tenants' profits, and so on. The same process in kind is to be gone through with regard to the two miles and a half as would be with regard to the whole line if that were all in one parish. We need not now repeat the reasoning which appears in our judgment before referred to. But, as we then said and have now in part repeated, this principle does not preclude a consideration of charges and expenses *whenever arising locally*, which are necessary for keeping the subject of assessment at the value which is made the measure of that assessment. And further, we must add, that whenever it is found that such charges and expenses do in fact apply equally to every mile of a railway, it is a convenient and allowable mode to arrive by a mileage division at the proportional part to be assigned to the miles in any particular parish. This is no departure from the parochial principle, if it be assumed as to particular charges (central superintendence for instance), that a separate investigation of them as they actually arise in, or are referable to, a particular

parish, would lead us to the same result as a mileage distribution of the whole.

It becomes by this hypothesis but another mode of arriving at it. In many cases it will be the more convenient; and just in some, perhaps, it may be the only practicable mode.

Having now laid down the principle, it would be right to apply it to what the case finds as to the two modes which have been respectively adopted by the parties,—and first, for convenience sake, to that of the appellants. "They," it is said, "have taken the gross receipts per mile per annum in the respondent parish exactly as the respondents had done, and they deducted from these the actual expenses of each mile ascertained or estimated." If the case had stopped there, we should have supposed that they had strictly acted on the true principle, and we must have adopted their conclusion. But it is evident from what follows that we should have been led into error, for the case goes on thus: "In order to do this, they ascertained the actual expenses incurred on the branch alone, and where the expenses were common to the entire branch, they divided such expenses by the number of miles in the branch, and they considered the result to be the expense of each mile in the branch. A small portion of the general expenses of the entire railway, being those of central superintendence, printing and advertising, were apportioned on the branch in the ratio of the business or traffic upon it, and such portion was subdivided as before on the mileage principle." This explanation shows that the appellants have, in fact, separated the branch from the trunk, except as to what they call a small portion of the general expenses of the entire railway, and then divided the expenses of

the branch thus separated on the mileage principle. We do not think them nece-sarily wrong in this last particular: it may have been no practical departure from the true principle, but only an allowable instance of what we have above stated to be a convenient practice, where the actual expenses were the same on every mile; and as no objection is made to this by the respondents, we must assume that it was so. But the separation of the branch from the trunk is, in its effect, the substantial ground of the dispute between the two parties, producing, it may be said, nearly the whole difference between £254 and £30 per mile; and unless they are justified in this, it is impossible that their mode of ascertaining the rateable value can prevail, and we think they are not.

We wish it to be distinctly understood that we come to this conclusion solely on the facts of this case. We are far from saying that there may not be cases in which two lines connected for many purposes and worked by the same company may yet have been kept so distinct by the statute or agreement which creates the connexion, or by the circumstances under which they are worked, that for the purpose of rating they would have to be separately considered as two distinct subject-matters. When such cases arise, they must be dealt with according to their respective circumstances; but in the present case the fusion of the two lines is complete. The branch, as we have hitherto called it, is absorbed into the trunk, and whether Tilehurst is on one or the other, our decision must have been the same. For by the case it is found, that by the 48th section of the special act, the appellants were enabled to purchase, and the company incorporated by that act to sell and transfer, the undertaking to the appellants, and on the

completion of the purchase, the appellants were to have and to hold the undertaking, the company to be dissolved, and the building and works to become part of the Great Western Railway. Accordingly, the appellants became the purchasers and proprietors; and, by a subsequent act, 9 & 10 Vict. c. 14, it was enacted, that it should thenceforth become part of the Great Western Railway.

So much for what it is. And how has it been worked? The case finds that ever since its completion, and at the time of making the rates, it was and still is worked as part of the entire railway known by the name of the Great Western Railway; and that a certain number of engines and carriages are appropriated to it, and a certain number of officers and servants employed exclusively on it. No separate account of the receipts and expenditure in respect of it is kept, but such receipts and expenditure are included in the general half-yearly revenue accounts laid before the proprietors. No separate annual account in abstract, showing the total receipts and expenditure in respect of it, is prepared by the appellants so as to be furnished to the overseers of the poor of the several parishes through which the said branch passes, in conformity with the Railways Clauses Consolidation Act.

Thus it appears both by the statutes and acts of the appellants, that there is absolutely nothing to distinguish the miles in Tilehurst, Paddington, Ealing, or any other parish on the original line. For the mere allotment of engines and carriages, or officers and servants, is nothing for the present purpose; it is merely an economical arrangement of the company for the working of this part of their line. We conclude, therefore, that a rateable value, ascertained by considering the twenty-

five miles as a distinct whole, cannot be correct, and therefore we cannot adopt that which is proposed by the appellants.

The mode adopted by the respondents is now to be considered. The case finds that, having ascertained the rateable value of the whole railway, minus the stations, they ascertained the gross actual annual receipts of the appellants in respect of each mile and portion of a mile of railway in their parish, and they assessed the appellants in respect of the said two miles and a half in the ratio "which such annual receipts bore to the gross annual receipts of the company in respect of the entire Great Western Railway, trunk and branches; the rateable value of a mile of railway in the respondent parish being calculated in the same proportion to the rateable value of the whole line, exclusive of the stations, as the gross actual annual receipts in respect of such mile bore to the total of such actual annual receipts of the company."

Before we consider the general principle here stated, we should notice, in passing, the term "trunk and branches;" this is the only place in the case where the plural "branches" is used. We do not know whether this was intentional or not; if it were, as we are not informed of any circumstances relating to the other branch or branches, we cannot say whether it or they ought to have been amalgamated with the trunk for the present purpose. But passing this by, it appears that the respondents have taken the deductions at the same rate for every mile of the railway; for they say, as the gross receipts of one mile to the gross receipts of the whole, so the rateable value of one mile to the rateable value of the whole; this is, in effect, to strike off from the gross receipts of a mile an aliquot part of the sum

which is struck off from the gross receipts of the whole, and assumes at least that the expenses are at one uniform rate throughout the whole line.

"If the case was silent on this subject, we might have presumed that the respondents had ascertained this to be the fact, and then there would have been no objection to a mileage division; but the case reasonably understood excludes this, for it finds that the actual expenses of the company are not in the proportion of the actual gross receipts, either on the branch or throughout the entire railway, nor are either such gross receipts or such expenses at one uniform rate per mile throughout the entire railway."

The counsel for the respondents laboured in vain to explain away the clear meaning of this passage, and failing in that, they equally laboured in vain to show that all the expenses on a railway were necessarily to be distributed in calculation equally over the whole line.

In the result we cannot adopt either of the modes suggested to us, or confirm the rate at either of the sums stated. The consequence must be, which we very much regret, that the award must be referred back to the learned arbitrators, to whom the parties and we ourselves are so much indebted for the labour and ability which they have bestowed on the case; we trust that the principles we have laid down will enable them to agree on a satisfactory rate, and that there may be no more litigation on the subject. We have said nothing in respect of the stations, as they seem to have been set aside from the matters in dispute, and very properly, by mutual consent.